

Environmental Protection Agency

§ 92.803

facts are actually and in good faith controverted. He/she shall thereupon issue an order specifying the facts which appear without substantial controversy, and the issues and claims upon which the hearing will proceed.

(z) *Conclusion of hearing.* (1) If, after the expiration of the period for taking an appeal as provided for by paragraph (u) of this section, no appeal has been taken from the Presiding Officer's decision, and, after the expiration of the period for review by the Environmental Appeals Board on its own motion as provided for by paragraph (v) of this section, the Environmental Appeals Board does not move to review such decision, the hearing will be deemed to have ended at the expiration of all periods allowed for such appeal and review.

(2) If an appeal of the Presiding Officer's decision is taken pursuant to paragraph (u) of this section, or if, in the absence of such appeal, the Environmental Appeals Board moves to review the decision of the Presiding Officer pursuant to paragraph (v) of this section, the hearing will be deemed to have ended upon the rendering of a final decision by the Environmental Appeals Board.

(aa) *Judicial review.* (1) The Administrator hereby designates the Deputy General Counsel, Environmental Protection Agency as the officer upon whom copy of any petition for judicial review shall be served. Such officer shall be responsible for filing in the court the record on which the order of the Environmental Appeals Board is based.

(2) Before forwarding the record to the court, the Agency shall advise the petitioner of costs of preparing it and as soon as payment to cover fees is made shall forward the record to the court.

Subpart I—Importation of Nonconforming Locomotives and Locomotive Engines

§ 92.801 Applicability.

(a) Except where otherwise indicated, this subpart is applicable to importers of locomotives or locomotive engines for which the Administrator has promulgated regulations under this part prescribing emission standards, that

are offered for importation or imported into the United States, but which locomotives or locomotive engines, at the time of importation or being offered for importation, are not covered by certificates of conformity issued under section 213 and section 206(a) of the Clean Air Act (that is, which are nonconforming locomotives or locomotive engines as defined in § 92.2), and this part. Compliance with regulations under this subpart does not relieve any person or entity from compliance with other applicable provisions of the Clean Air Act.

(b) Regulations prescribing further procedures for the importation of locomotives and locomotive engines into the Customs territory of the United States, as defined in 19 U.S.C. 1202, are set forth in U.S. Customs Service regulations (19 CFR chapter I).

§ 92.802 Definitions.

The definitions of subpart A of this part apply to this subpart.

§ 92.803 Admission.

A nonconforming locomotive or locomotive engine offered for importation may be admitted into the United States pursuant to the provisions of this subpart. In order to obtain admission the importer must submit to the Administrator a written request for approval containing the following:

(a) Identification of the importer of the locomotive or locomotive engine and the importer's address, telephone number, and taxpayer identification number;

(b) Identification of the locomotive's or locomotive engine's owner, the owner's address, telephone number, and taxpayer identification number;

(c) Identification of the locomotive and/or locomotive engine including make, model, identification number, and original production year;

(d) Information indicating the provision in this subpart under which the locomotive or locomotive engine is to be imported;

(e) Identification of the place(s) where the locomotive or locomotive engine is to be stored until EPA approval of the importer's application to the Administrator for final admission;

(f) Authorization for EPA enforcement officers to conduct inspections or testing otherwise permitted by the Act or regulations thereunder; and

(g) Such other information as is deemed necessary by the Administrator.

§ 92.804 Exemptions.

(a) Unless otherwise specified, any person may apply for the exemptions allowed by this section.

(b) Notwithstanding other requirements of this subpart, a nonconforming locomotive or locomotive engine that qualifies for a temporary exemption under this paragraph may be conditionally admitted into the United States if prior written approval for the conditional admission is obtained from the Administrator. Conditional admission is to be under bond. The Administrator may request that the U.S. Customs Service require a specific bond amount to ensure compliance with the requirements of the Act and this subpart. A written request for a temporary exemption from the Administrator shall contain the identification required in § 92.803 and information that demonstrates that the locomotives and or locomotive engines qualify for an exemption. Noncompliance with provisions of this section may result in the forfeiture of the total amount of the bond and/or exportation of the locomotive or locomotive engine. The following temporary exemptions are permitted by this paragraph (b):

(1) *Exemption for repairs or alterations.* Upon written approval by EPA, a person may conditionally import under bond a nonconforming locomotive or locomotive engine solely for purpose of repair(s) or alteration(s). The locomotive or locomotive engine may not be operated in the United States other than for the sole purpose of repair or alteration or shipment to the point of repair or alteration and to the port of export. It may not be sold or leased in the United States and is to be exported upon completion of the repair(s) or alteration(s).

(2) *Testing exemption.* A nonconforming test locomotive or locomotive engine may be conditionally imported by a person subject to the requirements of § 92.905. A test locomotive or

locomotive engine may be operated in the United States provided that the operation is an integral part of the test. This exemption is limited to a period not exceeding one year from the date of importation unless a request is made by the appropriate importer, and subsequently granted by EPA, concerning the locomotive or locomotive engine in accordance with § 92.905 for a subsequent one-year period.

(3) *Display exemptions.* (i) A nonconforming locomotive or locomotive engine intended solely for display may be conditionally imported under bond subject to the requirements of § 92.906(b).

(ii) A display locomotive or locomotive engine may be imported by any person for purposes related to a business or the public interest. Such purposes do not include collections normally inaccessible or unavailable to the public on a daily basis, display of a locomotive or locomotive engine at a dealership, private use, or other purpose that the Administrator determines is not appropriate for display exemptions. A display locomotive or locomotive engine may not be sold or leased in the United States and may not be operated in the United States except for the operation incident and necessary to the display purpose.

(iii) A display exemption is granted for 12 months or for the duration of the display purpose, whichever is shorter. Extensions of up to 12 months each are available upon approval by the Administrator. In no circumstances, however, may the total period of exemption exceed 36 months.

(c) *National security exemption.* Notwithstanding any other requirement of this subpart, a locomotive or locomotive engine may be permanently imported into the United States under the national security exemption found at § 92.908, if prior written approval for such permanent importation is obtained from the Administrator. A request for approval is to contain the identification information required in § 92.803 and information that demonstrates that the importer is entitled to the exemption.

(d) An application for exemption provided for in paragraphs (b) and (c) of this section shall be mailed to: Group Manager, Engine Compliance Programs